

1 CONSTANCE J. YU (SBN 182704)
2 E-mail: cyu@plylaw.com
3 GEORGE CHIKOVANI (SBN 254437)
4 E-mail: gchikovani@plylaw.com
5 PUTTERMAN | YU | WANG LLP
6 345 California Street, Suite 1160
7 San Francisco, CA 94104
8 Telephone No.: 415-839-8778
9 Facsimile No.: 415-737-1363
10
11 Special Counsel for FRED HJELMESET,
12 Trustee in Bankruptcy
13
14

15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re
EVANDER FRANK KANE,
Debtor.

FRED HJELMESET,
Trustee in Bankruptcy,
Plaintiff,

v.
SURE SPORTS LLC, FKA SURE SPORTS
LENDING LLC,
Defendant.

Case No. 21-50028 SLJ
Chapter 7
Hon. Stephen L. Johnson
Adversary Proceeding No. 22-05033 SLJ

**PARTIES' JOINT CASE MANAGEMENT
STATEMENT**

Date: February 17, 2023
Time: 1:30 p.m.
Place: Via Zoom Video Conference

PARTIES' JOINT CASE MANAGEMENT STATEMENT

1 **I. RULE 26(F) REPORT AND PROPOSED SCHEDULING ORDER**

2 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, the parties to this case, by and
3 through their respective counsel, jointly submit this Rule 26(f) Report and Proposed Scheduling Order:

4 **II. RULE 26(F) CONFERENCE**

5 Pursuant to Rule 26(f), the parties held a meeting on February 1, 2023, which was attended by
6 the following attorneys: George Chikovani for Plaintiff Fred Hjelmeset; Alan Wilmot and Tom Geher
7 for Defendant Sure Sports LLC.

8 **III. SUBJECTS AND NATURE OF DISCOVERY**

9 **A. RULE 26(a)(1) INITIAL DISCLOSURES**

10 The parties will exchange the initial discovery disclosures required by Rule 26(a)(1) by
11 February 15, 2023.

12 **B. DOCUMENTS**

13 A number of what the Parties expect to be the relevant documents were previously exchanged
14 by the parties in connection with the Florida arbitration proceedings initiated by Sure Sports prior to
15 the filing of the bankruptcy. The parties agreed to cooperate to use the previously produced
16 documents in this action to avoid duplication of effort, and to supplement the existing productions as
17 necessary.

18 **1. Discovery by Plaintiff**

19 Plaintiff believes that the discovery needed in this case is relatively targeted and
20 circumscribed. Because there is a single substantive legal claim, based on the Miller Ayala Act,
21 discovery can be targeted to the facts that are relevant to the elements of the Miller Ayala Act that are
22 alleged in the Complaint: namely, whether Sure Sports provided “financial services” within the
23 meaning of the Act with respect to agreements entered between Kane and Sure Sports when Kane
24 was a California resident; and the amounts of compensation received by Sure Sports pursuant to those
25 agreements.

26 Plaintiff expects to need the following categories of documents, to the extent not already fully
27 produced in connection with the arbitration: documents and communications relating to all loans
28 arranged/brokered/underwritten by Sure Sports on behalf of Kane; all communications relating to

PARTIES' JOINT CASE MANAGEMENT STATEMENT

1 Kane; all payments received by Sure Sports relating to the California loans; Sure Sports marketing
2 and/or policy documents describing the nature of Sure Sports services.

3 **2. Discovery by Defendant**

4 Defendant believes that the discovery needed in this case will be specifically related to
5 communications and documents exchanged between Kane and: (1) his personal representatives,
6 including, but not limited to, Kane's agent, manager, and financial advisors, and (2) other third
7 parties involved in the formation of the business relationship between Kane and Sure Sports, for the
8 purpose of determining how the relationship was formed (i.e. who came to who first). Documents
9 needed will be focused on the issue of how the loans entered into and received by Kane came to
10 existence, the purpose of obtaining such loans, and Sure Sports role (including, but not limited to,
11 services provided) with regard to such loans.

12 Defendant will also require discovery of documents pertaining to: (i) Kane's financial
13 situation at the time of entering such loans in order to determine whether any fraud or other
14 intentional misconduct was committed by Kane in obtaining such loans and/or seeking Sure Sports'
15 services with regard to such loans, and (ii) proof of any payments made by Kane to Defendant
16 pursuant to the Underwriting Agreements.

17 **C. WRITTEN DISCOVERY**

18 **1. Discovery by Plaintiff**

19 Plaintiff expects to serve a limited number of targeted interrogatories and requests for
20 admission, primarily in order to establish certain elements that are undisputed, such as Sure Sports'
21 awareness of Kane's status as a California athlete during the relevant period.

22 **2. Discovery by Defendant**

23 Defendant expects to serve interrogatories and requests for production in order to establish the
24 actuality of Kane's financial situation at the time of requesting the loans, the manner and/or method
25 pertaining to Kane's request for such loans, the level of any third party involvement relating to
26 Kane's obtainment of such loans, and proof of any payments made by Kane to Defendant pursuant to
27 the Underwriting Agreements. Defendant also expects to serve interrogatories and requests for
28 production (as applicable) relative to the elements of the claim of this action; namely, any such

PARTIES' JOINT CASE MANAGEMENT STATEMENT

1 discovery that may be used to dispute the application of the Miller Ayala Act to Sure Sports'
2 provision of services.

3 **D. DEPOSITIONS**

4 **1. Discovery by Plaintiff**

5 Plaintiff expects to take the following depositions: a 30(b)(6) deposition of Sure Sports;
6 potentially additional depositions of specific Sure Sports personnel, if necessary based on 30(b)(6)
7 deposition.

8 **2. Discovery by Defendant**

9 Defendant expects to take the following depositions: Evander Kane; Tony Chircosta; other
10 representatives of Kane (i.e. Kane's agent, manager, and/or other parties involved in assisting Kane
11 obtain loans and/or familiar with Kane's financial situation)

12 **E. EXPERT WITNESSES**

13 Plaintiff expects to present a single expert, on issues of athlete agent regulations and laws, and
14 the purpose and scope of the Miller Ayala Act specifically.

15 Defendant reserves the right to present a single expert witness for rebuttal purposes and/or for
16 the purpose of discussing the intent athlete agent regulations and laws, including, but not limited to,
17 the Miller Ayala Act.

18 **F. ELECTRONICALLY STORED INFORMATION**

19 The parties do not presently expect any complex issues relating to the production of ESI in
20 this matter. ESI consists of a relatively limited volume of email communications and attachments,
21 and personal and/or financial information stored within Defendant's client database.

22 **G. CONFIDENTIAL INFORMATION**

23 The Parties intent to enter into a stipulated protective order for the protection of confidential
24 information, based on the Northern District Model Order, and are presently meeting and conferring
25 regarding the terms of the order.

26 ///

27 ///

28 ///

PARTIES' JOINT CASE MANAGEMENT STATEMENT

1 **IV. DISCOVERY AND TRIAL SCHEUDLE**

2 **A. PLAINTIFF'S POSITION**

3 Plaintiff requests a trial date in September or October of 2023, or the next available date
4 thereafter on the Court's trial schedule.

5 Plaintiff believes that pre-trial and trial deadlines consistent with the court's Model Trial
6 Scheduling Order will be workable with a trial date as early as September 2023.

7 Plaintiff's counsel is presently available for trial at any time in the Fall of 2023 or the first
8 half of 2024.

9 **B. DEFENDANT'S POSITION**

10 Defendant requests a trial in June 2024, or the next available date thereafter on the Court's
11 trial schedule. Once the trial date is established, the parties may meet and confer in order to solidify
12 pre-trial and trial deadlines consistent with the court's Model Trial Scheduling Order.

14 DATED: February 10, 2023

PUTTERMAN | YU | WANG LLP

15 By: 

16

GEORGE CHIKOVANI
17 Special Counsel for FRED HJELMESET,
18 Trustee in Bankruptcy

19 HEITNER LEGAL, PLLC

20 By: /s/ Darren Heitner

21

DARREN HEITNER
22 Pro Hac Vice
23 Attorney for Defendant

24 PARTIES' JOINT CASE MANAGEMENT STATEMENT